

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1797/12-13  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/CI/1

**Panel on Commerce and Industry**

**Minutes of meeting**  
**held on Tuesday, 16 July 2013, at 2:30 pm**  
**in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Vincent FANG Kang, SBS, JP (Chairman)  
Dr Hon CHIANG Lai-wan, JP (Deputy Chairman)  
Hon Emily LAU Wai-hing, JP  
Hon WONG Ting-kwong, SBS, JP  
Dr Hon LAM Tai-fai, SBS, JP  
Hon Steven HO Chun-yin  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK  
Hon Dennis KWOK  
Hon Christopher CHEUNG Wah-fung, JP  
Hon SIN Chung-kai, SBS, JP  
Hon Martin LIAO Cheung-kong, JP  
Ir Dr Hon LO Wai-kwok, BBS, MH, JP  
Hon CHUNG Kwok-pan
- Members attending** : Hon Ronny TONG Ka-wah, SC  
Hon Claudia MO
- Members absent** : Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP

**Public officers  
attending**

: Agenda item III

Mr Andrew WONG Ho-yuen, JP  
Permanent Secretary for Commerce and Economic  
Development (Commerce, Industry and Tourism)

Mrs Alice CHEUNG CHIU Hoi-yue, JP  
Deputy Secretary for Commerce and Economic  
Development (Commerce and Industry) 3

Mr Brian LO Sai-hung, JP  
Deputy Director-General of Trade and Industry  
(Commercial Relations, Controls and Support)

Mr Johann WONG Chung-yan  
Deputy Commissioner for Innovation and  
Technology

Agenda Item IV

Mr Gregory SO, GBS, JP  
Secretary for Commerce and Economic  
Development

Miss Patricia SO  
Acting Deputy Secretary/Principal Assistant  
Secretary for Commerce and Economic  
Development (Commerce and Industry)

Mr Peter K F CHEUNG, JP  
Director of Intellectual Property

Ms Fanny PANG Shuk-fan  
Assistant Director of Intellectual Property  
(Copyright)

**Clerk in attendance** : Ms Annette LAM  
Chief Council Secretary (1)3

**Staff in attendance** : Ms Connie HO  
Senior Council Secretary (1)3

Miss Rita YUNG  
Council Secretary (1)3

Ms May LEUNG  
Legislative Assistant (1)3

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Action

**I. Confirmation of minutes of meeting and matters arising**

(LC Paper No. CB(1)1485/12-13 -- Minutes of meeting held on  
21 May 2013

LC Paper No. CB(1)1508/12-13(01) -- List of follow-up actions)

The minutes of the meeting held on 21 May 2013 were confirmed.

**II. Information papers issued since last meeting**

(LC Paper No. CB(1)1352/12-13(01) -- Information on the  
financial position of the  
Applied Research Fund  
for the period of 1  
December 2012 to  
28 February 2013

LC Paper No. CB(1)1525/12-13(01) -- Administration's paper on  
United Nations Sanctions  
(Côte d'Ivoire) Regulation  
2013)

2. Members noted that the above papers had been issued since last meeting held on 18 June 2013.

**III. Trade relations between the Mainland and Hong Kong**

(LC Paper No. CB(1)1282/12-13(03) -- Administration's paper on  
economic and trade  
relations between the  
Mainland and Hong Kong

LC Paper No. CB(1)1282/12-13(04) -- Paper on trade relations  
between the Mainland and  
Hong Kong prepared by the  
Legislative Council  
Secretariat (updated

background brief)

LC Paper No. CB(1)1508/12-13(02) -- Extract of minutes of meeting on trade relations between the Mainland and Hong Kong held on 18 June 2013)

Presentation by the Administration

3. Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) (PSCIT) said that at the request of Panel members at the last meeting held on 18 June 2013, this meeting would continue to discuss the item of "Trade relations between the Mainland and Hong Kong" to allow more time for discussion. PSCIT added that details of the latest developments in economic and trade relations between the Mainland and Hong Kong were set out in the Administration's paper (LC Paper No. CB(1)1282/12-13(03)) issued for the June meeting. The Administration would respond to the follow-up questions raised by members at the June meeting in due course.

Discussion

*National Five-Year Plan and Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)*

4. Mr WONG Ting-kwong noted that the Chief Executive had remarked during his visit to Beijing in April 2013 that the Government of the Hong Kong Special Administrative Region (HKSARG) would participate proactively in the preparation of the National 13th Five-Year Plan, and that the Central People's Government (CPG) supported HKSARG's proposal of expanding the scope of "early and pilot implementation" measures under CEPA to the nine provinces in the Pan-Pearl River Delta (PPRD) Region. Mr WONG enquired about the progress of HKSARG's work in these two areas and asked how HKSARG would assist small and medium enterprises in Hong Kong to expand their businesses in the PPRD Region.

5. PSCIT responded that the Constitutional and Mainland Affairs Bureau (CMAB) had commenced early preparatory work to complement the preparation of the National 13th Five-Year Plan so as to better grasp the opportunities brought about by the development of the Mainland. The Commerce and Economic Development Bureau would in due course gather views and suggestions from the trade and industry sectors as appropriate.

6. On CEPA, PSCIT advised that HKSARG would continue to liaise with the Mainland authorities at both central and provincial levels to strengthen the promotion and effective implementation of CEPA, including basically achieving liberalization of trade in services to Hong Kong by the end of the National 12th Five-Year Plan period, as well as the expansion of the scope of the "early and pilot implementation" measures to the nine provinces in the PPRD Region. PSCIT added that with the support of the CPG, HKSARG and the Guangdong authorities aimed to achieve basic liberalization of trade in services between Hong Kong and Guangdong in 2014. HKSARG would continue to maintain close dialogue with the trade and industry sectors in Hong Kong. The Trade and Industry Department (TID) and the offices of HKSARG in the Mainland (the Mainland Offices) would disseminate relevant information on CEPA to Hong Kong enterprises by means of circulars, websites as well as symposiums and seminars, etc.

*Promotion of inward investment*

7. Mr CHUNG Kwok-pan noted that in 2013, Invest Hong Kong (InvestHK) planned to organize joint overseas investment promotion seminars in partnership with various Mainland cities such as promotion in Taipei with Zhaoqing, in Auckland with Guangzhou, in Vladivostok with Fujian, and in Berlin with Guangdong. He queried how Hong Kong would benefit from these joint promotion activities and was concerned whether Hong Kong's intermediary role as an ideal platform for Mainland companies to go global would be undermined. Echoing Mr CHUNG Kwok-pan's views, the Chairman asked whether Hong Kong and the Mainland cities would compete with each other when attracting foreign direct investment in these joint promotion activities.

8. In response, PSCIT advised that since 2002, InvestHK had been conducting joint investment promotion seminars in key overseas markets in collaboration with Guangdong province and its cities to promote the combined advantages offered by Hong Kong and the Mainland, in particular the Pearl River Delta Region. InvestHK aimed to promote Hong Kong as an attractive business destination for multinational companies to expand their business, to locate their regional/global headquarters, and to perform other strategic functions such as research and development and treasury management functions for their Asia- and Mainland-based operations. InvestHK also encouraged Mainland companies to leverage on Hong Kong's well-developed service industries and solid international marketing experience to enhance their capabilities in going global, and to manage their assets and investments overseas. PSCIT further advised that since the advantages offered by Hong Kong and the Mainland cities were different, there would be more complementarity than competition between Hong Kong

and the Mainland counterparts in the joint investment promotion activities. While the joint promotion seminars aimed at introducing the overall investment environment and opportunities in Hong Kong and the Mainland, InvestHK would subsequently proactively reach out and provide one-to-one consultation and support services to target companies.

9. Mr LAM Tai-fai pointed out that on top of encouraging Mainland companies to come to Hong Kong for listing and capital raising, it was also important to attract Mainland companies to set up or expand business in Hong Kong, a move that would benefit Hong Kong's economic development. He enquired about the Administration's initiatives in this respect, including whether priority would be accorded to companies in any particular sectors and industries. Sharing Mr LAM Tai-fai's views, the Chairman and the Deputy Chairman cited as an example Hong Kong's testing and certification industry which had established a good foundation on basis of a robust accreditation system, and enjoyed high professional standards and an excellent reputation. They suggested that the Administration should attract Mainland companies in the Chinese medicines, pharmaceutical and high-value food industries to leverage on the advantage of Hong Kong's testing and certification industry to set up manufacturing or processing operations in Hong Kong.

10. PSCIT responded that the Mainland was a priority market and remained the largest source of InvestHK's projects. The number of completed projects related to Mainland companies had continued to increase over the years. PSCIT further advised that InvestHK adopted a sector-focused and market-oriented approach to identify and attract investment from target companies. In launching the sector-specific investment promotion programmes, InvestHK had been collaborating closely with relevant bureaux and departments and other supporting organizations to support Government's policy objectives. InvestHK accorded priority to promoting business opportunities in those sectors and industries where Hong Kong had competitive edge, including in particular innovation and technology, creative industries, transport, trading, and financial services sectors. At Mr LAM Tai-fai's request, the Administration undertook to include in the next report of the work of InvestHK to the Panel statistics and information on InvestHK's completed projects related to Mainland companies.

Admin

### *Intellectual property rights*

11. Referring to the problem of pirated goods in the Mainland, Mr CHUNG Kwok-pan asked how the Administration would protect the patents, trademarks and other intellectual property (IP) rights of Hong Kong enterprises in the Mainland. Mr CHUNG called on the Administration to

explore the possibilities of fostering mutual recognition of patents between Hong Kong and the Mainland under CEPA. The Chairman and Mr MA Fung-kwok concurred with Mr CHUNG.

12. In response, PSCIT advised that HKSARG had liaised with the Mainland authorities to protect IP rights through education, publicity, and enforcement. Various events were organized to achieve this objective. These included training and exchange programmes to encourage experience sharing in brand building and brand management in Guangdong Province and Hong Kong, and seminars to provide the business sector with information on enforcement and protection of their brands in the Mainland. PSCIT further advised that patent registration was territorial. Most countries, including the Mainland, ran their own patent offices to determine the grant of patents and to maintain autonomy of their patent systems. HKSARG would continue to foster a close partnership between the IP-related authorities in the Mainland and Hong Kong so as to enhance mutual understanding and respect for the patent and IP systems in the two places.

#### *Cultural and creative industries*

13. Mr MA Fung-kwok declared that he was the Chairman of the Hong Kong Film Development Council. He called on the Administration to strive for further trade liberalization and effective CEPA implementation to improve the Mainland market access for Hong Kong's movie and publishing industries. In particular, Mr MA called for the facilitation of synchronized distribution of Cantonese versions of Hong Kong films in Hong Kong and the Guangdong market, as well as the liberalization measures to allow Hong Kong publishers to publish books and magazines in the Mainland directly on a quota basis.

14. PSCIT responded that the Administration had taken note of the call from the trade for further liberalization measures under CEPA. HKSARG would continue to communicate with the Mainland authorities to reflect views of the trade and to further the liberalization in various service sectors under CEPA. PSCIT remarked that more time would be needed to secure further liberalization measures in sectors that might involve legal and policy considerations on the Mainland side.

15. Deputy Director-General of Trade and Industry (Commercial Relations, Controls and Support) (DDGTI) supplemented that the Joint Working Group established to enhance the existing mechanism for the implementation of CEPA held its first meeting on 18 June 2013, focusing on CEPA implementation problems in Guangdong. Representatives of the CPG, the Guangdong Provincial People's Government, as well as HKSARG held interactive discussions and put forward positive recommendations with a

view to addressing the CEPA implementation issues in Guangdong. Relevant HKSARG bureaux and departments would maintain close liaison and follow up with their Mainland counterparts after the meeting and would liaise closely with the trade in Hong Kong, explaining to them the follow-up work and outcomes. DDGTI advised that as regards the audiovisual (film) sector, the Radio, Film & TV Administration of Guangdong Province had been authorized by the State General Administration of Press, Publication, Radio, Film and Television to censor Cantonese versions of Hong Kong films for the purpose of film festivals in Guangdong. As a result, the time required for importation of these films according to the prevailing mechanism would be reduced when they were commercially released in Guangdong in the future. The measure would facilitate access of Cantonese versions of Hong Kong films to the Guangdong market, and enable synchronized distribution of the films in Hong Kong.

*Assisting Hong Kong enterprises and residents in the Mainland*

16. The Chairman and Ms Emily LAU expressed concern about the assistance provided to Hong Kong enterprises and residents when they encountered problems in the Mainland. Ms LAU highlighted that some Hong Kong businessmen had unfortunately been involved in litigation or even detained by the Mainland authorities while conducting business in the Mainland. Mr Martin LIAO noted with concern media reports on the increasing number of labour disputes involving Hong Kong residents working in the Mainland, such as default payment of wages by employers, as well as issues relating to their working permits. Sharing the concerns expressed by Ms Emily LAU and Mr Martin LIAO, Mr SIN Chung-kai remarked that there were comments that the Mainland Offices had not proactively provided practical assistance to Hong Kong residents and enterprises in the Mainland. These members urged the Mainland Offices to render timely assistance to Hong Kong residents in the Mainland, particularly those in distress, such as to liaise with relevant government authorities and Courts in the Mainland or to arrange officers of the Mainland Offices to visit Hong Kong residents being detained.

17. In response, PSCIT advised that HKSARG had been actively co-operating and communicating with the Mainland on different policy areas via Government-to-Government co-operation mechanisms at both central and provincial levels. As regards assisting Hong Kong enterprises in the Mainland, HKSARG had been maintaining close dialogue with the trade through the Task Force to Support the Processing Trade and other channels, so as to understand the trade's concerns and views regarding their operations in the Mainland. Close liaison was also maintained with the Mainland authorities at various levels (including through the Hong Kong/Guangdong



Expert Group on the Restructuring and Upgrading of the Processing Trade) to relay to them the views of Hong Kong's trade and to discuss with them measures to support the trade. The TID and the Mainland Offices also made use of various communication channels to enhance the trade's understanding of the Mainland's latest policies, regulations and business environment.

18. PSCIT further advised that for business, trade and labour dispute cases, the Mainland Offices would provide pertinent information, including relevant legislations and services to the concerned Hong Kong enterprises and residents for their consideration. On the premises that HKSARG should not and would not interfere with the Mainland's judiciary system, the Mainland Offices would not be directly involved in cases that had entered into legal proceedings. The Mainland Offices would make the best endeavor to assist Hong Kong enterprises and residents under the "One Country, Two Systems" principle and within the legal parameters.

Admin

19. PSCIT undertook to refer to CMAB, Ms Emily LAU's and Mr SIN Chung-kai's requests for provision of information on the number of cases of Hong Kong businessmen involving in business and trade disputes and being detained by the Mainland authorities, as well as the number and nature of requests for assistance received by the Mainland Offices.

20. The Chairman informed members that the Administration proposed to brief the Panel on the work of the overseas Hong Kong Economic and Trade Offices, the Mainland Offices, as well as the Hong Kong Economic, Trade and Cultural Office (Taiwan) at the Panel meeting to be held in October 2013 in the 2013-2014 legislative session.

**IV. Public consultation on treatment of parody under the copyright regime**

(LC Paper No. CB(1)1508/12-13(03) -- Administration's paper on public consultation on treatment of parody under the copyright regime

LC Paper No. CB(1)1508/12-13(04) -- Paper on public consultation on treatment of parody under the copyright regime prepared by the Legislative Council Secretariat (background brief)

LC Paper No. CB(1)1508/12-13(05) -- Letter from Hon Claudia  
(Chinese version only) MO dated 12 July 2013)

Presentation by the Administration

21. At the Chairman's invitation, the Secretary for Commerce and Economic Development (SCED) briefed members on the three-month public consultation exercise commencing 11 July 2013 on the treatment of parody under Hong Kong's existing copyright regime. Details of the consultation issues and possible options were set out in the Administration's paper (LC Paper No. CB(1)1508/12-13(03)).

Discussion

*The consultation exercise and the concept of parody*

22. The Chairman referred members to Ms Claudia MO's letter dated 12 July 2013 requesting to hold a public hearing to receive views on the possible options for the treatment of parody as put forward by the Administration in its consultation paper. Noting that the three-month consultation from 11 July to 15 October 2013 would fall within the summer recess of the Legislative Council (LegCo), the Chairman requested the Administration to consider extending the consultation period for at least one month up to mid-November 2013 to enable the Panel to arrange a public hearing towards the end of October or early November 2013 to receive public views. SCED agreed to accommodate the work of the Panel, adding that as the consultation exercise had just begun, the Administration would determine the closing date of the consultation period at a later stage having regard to the overall progress.

23. The Deputy Chairman enquired about the rationale on adopting the term "parody" in the consultation paper instead of "secondary creation" which was commonly used by netizens in Hong Kong to denote the genre of taking advantage of an existing work as a form of expression. SCED explained that while some local media and some sectors of the public sometimes used the term "secondary creation" interchangeably with "parody", it was not a term commonly used in copyright jurisprudence and might entail a much larger scope than parody. In fact, the term "secondary creation" had been used very loosely to cover a wide-range of activities, including a mere adaptation or modification of a copyright work. Having considered the approaches adopted in overseas jurisdictions, the Administration decided that parody should be the subject of the present consultation.

24. Mr MA Fung-kwok declared that he was the representative from the Sports, Performing Arts, Culture and Publication functional constituency. He said that stakeholders of his functional constituency welcomed the consultation exercise. He did not subscribe to the view that enhancing copyright protection would necessarily stifle creativity. In his view, the promotion of creativity and protection of copyright did not conflict with each other as creativity could only be nurtured in an environment with robust copyright protection. He supported the Administration's proposal for using "parody" instead of "secondary creation" as the subject of the consultation exercise as the latter lacked a clear definition. He opined that the core consideration of the proposed options was that they must be able to respect the original creativity of a copyright work. SCED responded that the Administration well appreciated the importance of encouraging creativity, and the consultation exercise was launched with a view to striking a fair balance between protecting the legitimate interests of copyright owners and other public interests such as reasonable use of copyright works and freedom of expression in the treatment of parody.

25. Mr SIN Chung-kai welcomed the consultation exercise and opined that a thorough consultation with a final proposal addressing the public concerns about the treatment of parody would facilitate the Administration in taking forward the legislative proposals to update Hong Kong's copyright regime. Pointing out that the legal concepts provided in the consultation paper were difficult to grasp while the number of stakeholders on the subject matter was rather substantial, Mr SIN suggested that the Administration should post clear and concise information on the internet platform to explain to the general public and netizens the gist of the proposed options and alleviate their concerns over the subject. SCED said that the aim of the consultation exercise was to explore how the copyright regime could be relaxed to appropriately take care of parody to strike a fair balance between freedom of expression and copyright protection. He noted Mr SIN's suggestion and said that the Administration would launch a series of public forums and stakeholders engagements to gauge public views as well as to explain the subject matter and would disseminate the related information to the public through various channels and platforms.

#### *Conditions and grounds for exemptions*

26. Pointing out that it would be difficult to define whether any copyright infringing acts had caused "more than trivial" economic prejudice to the copyright owner, Ms Claudia MO asked if the Administration would consider exempting parodists from criminal and civil liabilities on the grounds of public interests and non-commercial use of parodies. Cautioning that the devils might be hidden in the details of the proposed options which had not

been fully provided in the consultation paper, Ms MO was keen to ensure that netizens' right to freedom of expression through the use of parody would not be compromised upon the implementation of any arrangements under the proposed options. She also enquired if the Administration would consider merging options 2 and 3 put forth in the consultation document.

27. SCED responded that the Administration maintained an open mind towards the proposed options and would welcome the public to suggest any other proposals that would be in compliance with the guiding principles as stipulated in paragraph 26 of the consultation paper, which included, among others, maintaining a fair balance between protecting the legitimate interests of copyright owners and other public interests, such as reasonable use of copyright works and freedom of expression. He added that any criminal exemption or copyright exception to be introduced must be fully compliant with Hong Kong's international obligations, such as Article 61 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO) and the "three-step test" requirement under Article 13 of TRIPS Agreement respectively. He said that the exemption conditions for criminal and civil liabilities were different, and the proposed option 2 focused on criminal exemption while option 3 dealt with fair dealing exception covering both criminal and civil liabilities. Due consideration should be given to whether the concerned international obligations could be met if the two options were to be combined into one.

28. Mr Charles MOK welcomed the extension of the consultation period. He said that the consultation document had aroused much concern among netizens at internet forums. Various issues were raised, such as whether the existing copyright regime should be changed to deal with parody, the statutory definitions of "parody", "satire" and other relevant terms, the scope and application of exemption, the qualifying conditions, etc, all of which were complex issues requiring a long consultation time. Mr MOK was keen to ensure that the Administration would convene open discussion forums to widely engage members of the public in the consultation, and to proactively invite relevant stakeholder organizations to give their views on the subject.

29. SCED responded that the options proposed in the consultation exercise were in response to the public feedback in respect of treatment of parodies collected during previous discussions on the Copyright (Amendment) Bill 2011. He said that Option 1 aimed at clarifying the provisions for criminal sanction under the Copyright Ordinance (Cap. 528) regarding both the existing "distribution offence" and the proposed "communication offence" by underlining in the legislation the consideration of whether the infringing acts had caused "more than trivial" economic prejudice to the copyright owners and by introducing relevant factors as guidance to the court in

determining the magnitude of economic prejudice. Option 2 proposed to introduce a criminal exemption to specifically exclude parody from the existing "distribution" and the proposed "communication" offences. The dissemination of parody, so long as it met the qualifying conditions specified in the relevant provisions, would not attract any criminal liability under those provisions. Option 3 proposed to introduce a fair dealing exception for parody under which distribution and communication of parody would not attract any civil or criminal liability if the qualifying conditions of the exception were met. SCED highlighted that the objectives of the consultation exercise were to build consensus in the community as far as possible, thus enabling the Government to identify an option that would serve the best interest of Hong Kong and was broadly acceptable to the parties concerned. To this end, the Administration had arranged to meet major stakeholder organizations in early August 2013 to solicit their views on the proposed options.

30. Mr Dennis KWOK drew members' attention to the provision in the Copyright, Designs and Patent Acts 1988 of the United Kingdom (UK) to balance the right of copyright owners and that of the users, such as journalists, over the infringement of copyright in news reporting on the ground of public interest. He said that according to the rulings of the Courts of the UK and the European Court of Human Rights, public interest might override copyright and therefore the right of copyright owner was not absolute in cases involving substantial public interest. Mr KWOK asked if the Administration would consider providing similar provisions in the Copyright Ordinance of Hong Kong to protect the right of journalists and producers of "secondary creations" and parodists in news reporting, critics, commentary on current events, social, economic or political issues involving substantial public interest.

31. SCED responded that similar provisions were indeed provided in Section 192(3) of the Copyright Ordinance. He said that the existing copyright regime had provided for a number of copyright exceptions or permitted acts for users to facilitate the reasonable use of copyright works in various ways. For instance, the fair dealing of copyright works for the purpose of news reporting was permissible with qualifying conditions stipulated under section 39(2) and (3) of the Copyright Ordinance.

32. In response to Mr KWOK's enquiry if the Administration would make reference to UK court cases to further delineate the right of copyright owners and public interest in the Hong Kong copyright law, SCED reiterated that the consultation exercise was about parody under the current copyright regime whereby public interest would be considered as a ground for exception. Director of Intellectual Property (DIP) added that the Copyright Ordinance of

Hong Kong was largely modelled on the Copyright, Designs and Patent Acts 1988 of the UK. The UK Government had conducted several rounds of public consultation exercise on various copyright issues including that for parody since 2006 and had decided to introduce, among other things, a fair dealing exception to allow limited copying for parody, caricature and pastiche, while maintaining the current system of moral rights. The Administration would closely follow the development of the future legislation in relation to parody in the UK for reference.

33. Mr Ronny TONG said that according to the feedback to the consultation document that he had received so far, members of the public were concerned that no definition was provided for the term "parody" in the consultation document. Instead of using "parody" as the subject of exemptions, Mr TONG asked if the "fair comment" principle under the context of the law of defamation could be considered as a ground for exemption from criminal and civil liabilities for works of critics as long as these works were not produced intentionally for profit-making purposes.

34. SCED reiterated that the Administration was open-minded towards the proposed options and would welcome members of the public to put forth other proposals for consideration as long as they could strike a balance between the legitimate interests of copyright owners and users and were in compliance with Hong Kong's international obligations in respect of copyright protection. He said that while a variety of terms such as "parody", "satire", "caricature" and "pastiche" were used in overseas jurisdictions to describe the genre of including an element of imitation or incorporation of certain elements of an underlying copyright work, the term "parody" was used as a general reference to such imitations in this consultation exercise for the sake of consistency and convenience. Regarding the scope and application of the criminal exemption under option 2 set out in the consultation document, SCED said that public views were invited on what subject matter should be covered by the exemption, including whether it should cover infringing copy or communication for the purpose of "parody", "satire", "caricature" or "pastiche", or a certain combination of such terms, or whether the exemption should instead cover a more specific formulation such as "commentary on current events, social, economic or political issues". Views were also invited on whether a statutory definition of "parody", "satire" or other relevant terms should be provided. However, SCED cautioned that should there be a statutory definition of the terms in the local copyright legislation, Hong Kong might not be able to make reference to precedent cases in overseas jurisdictions where no definition of the terms was provided.

35. Ir Dr LO Wai-kwok opined that the proposed treatment of parody should aim at striking a fair balance between the protection of copyright and freedom of expression. He said that there was a genuine need for Hong Kong to update its copyright regime to catch up with the international trend by making reference to international practices. Pointing out that the general public and netizens might not understand the concept of parody, Ir Dr LO urged the Administration to provide more information on other jurisdictions' treatment of parody for the public's reference in the consultation exercise. As the creation of parody would usually involve a particular person, Ir Dr LO asked if personality right would be protected under the proposed options for the treatment of parody or whether the damages for personality right infringement should be claimed by instituting civil proceedings in accordance with the law of defamation.

36. SCED responded that currently Hong Kong did not have specific legislation on personality right. He highlighted that the subject of the current consultation exercise was "parody" under the copyright regime, and the practices of other jurisdictions had been included in the consultation paper. He added that among other common law jurisdictions that had been surveyed, Australia and Canada had provided a copyright exception for parody and satire which was crafted within the ambit of "fair dealing" without a statutory definition of those terms. The precise scope of the exception and the issue of "fairness" were to be determined by the court. He said that consideration could be given to providing a list of non-exhaustive factors for the court to determine whether the dealing of a copyright work was fair. The relevant factors might include the purpose and nature of the dealing, the nature of the work, the amount and substantiality of the portion dealt with in relation to the copyrighted work as a whole, and the effect of the dealing on the potential market for or value of the work. The Administration was open-minded as to whether a definition of "parody" should be provided in the light of local situation and would welcome public views in this respect. He hoped that the public would not unduly label the Administration's proposals and would have a rational discussion on the issues raised in the consultation paper.

#### *Law enforcement*

37. Mr CHUNG Kwok-pan enquired how the copyright law could be enforced in the internet world if the infringing act did not occur in Hong Kong. DIP explained that generally speaking, the law enforcement action would be undertaken by enforcement agents of the place where the infringing act took place. To demonstrate that the infringing act was related to Hong Kong, the copyright owner was required to lodge a complaint to the Customs and Excise Department (C&ED), and to prove in investigations the subsistence and legitimate ownership of copyright in the underlying work and

that the work in question had indeed infringed such copyright. C&ED would take all the available evidence into consideration in deciding whether to refer the case to the Department of Justice (DOJ) for consideration of possible criminal prosecution.

38. Mr Charles MOK relayed netizens' worries about selective prosecution on copyright infringement cases in the future. Pointing out that the law enforcement action against copyright infringement would be taken only upon receipt of a complaint lodged by a copyright owner according to prevailing mechanism, Mr MA Fung-kwok said that worries of the public over selective prosecution by the Government could be greatly relieved should the procedures of enforcement action be clearly set out. SCED said that Hong Kong was governed by the rule of law, and it would be impossible for the Government to prosecute on copyright offences without involving the copyright owners. At the stage of investigation, copyright owners were required to prove the subsistence and legitimate ownership of copyright in the underlying work and that the work in question had indeed infringed such copyright. The C&ED would refer the case to the DOJ for consideration of prosecution only if such evidence was available. Any worries of "selective" prosecution were unfounded.

#### *Summing up*

39. The Chairman advised the Administration to take note of members' views expressed at the meeting in taking forward the consultation exercise. In response to Ms Claudia MO's and Mr Charles MOK's suggestion that a joint panel meeting be held with the Panel on Information Technology and Broadcasting to receive public views on the Administration's proposals on treatment of parody, the Chairman said that as the subject matter was under the purview of the Panel on Commerce and Industry, the Panel would conduct a public hearing towards the end of October or in early November 2013, and invite members of the Panel on Information Technology and Broadcasting to join the meeting to listen to the views of deputations and take part in discussion on the matter.

#### **V. Any other business**

40. The Chairman said that this was the last Panel meeting in the 2012-2013 legislative session and he thanked members and the Administration for their support and contributions in the session.



41. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 1  
Legislative Council Secretariat  
18 September 2013